IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7905 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

SANGITABEN K BHATIA - Petitioner(s)
Versus
STATE OF GUJARAT & 4 - Respondent(s)

==========

Appearance :
MS SHUBHRA ALMOULA for Petitioner(s) : 1,
MR SIRAJ GORI, AGP for Respondent(s) : 1,2,3
DS AFFIDAVIT NOT FILED :4,5.

==========

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 12/06/2006

ORAL JUDGMENT

1.Though it is stated that affidavit for direct service is not filed qua respondents no. 2 to 5, in fact in the present case, I do not find it necessary to await such an affidavit. In any case learned AGP Shri Siraj Gori who is appearing for respondent no.1-State also would

be representing respondents no. 2 and 3.

2. The facts emerging from the petition are that the petitioner belongs to Baxi Panch community. She had obtained 56% marks in H.S.C.E. (General Stream) examination held by the Board in the year 1990. On the basis of marks obtained by her, she had applied for admission in General Nursing Course, advertisement for which was published in Gujarat Samachar Daily on 30-06-1990. The petitioner after awaiting for a reply in response to her application for admission, upon inquiry came to know that one private individual namely Archana Gajendraprasad Agrawal who had obtained 53% of marks in the examination was given the admission in the General Nursing Course whereas the petitioner was not given such an admission. Upon representation, the petitioner was informed that she could be considered against the seats reserved for Baxi Panch community and she cannot get admission on unreserved seats.

3. It is the case of the petitioner that being a member of Baxi Panch community would not dis-entitle her from seeking admission in the unreserved seats and a candidate belonging to general category cannot be preferred over the petitioner when the petitioner has received more marks in the relevant examination.

4.The stand of the petitioner is legally justified. It is well settled that a candidate belonging to reserved category cannot be kept out of consideration on unreserved seats, if the candidate, on the strength of his/her merit warrants such consideration. Additionally, while admitting this petition by an order dated 26-02-1991, this Court had granted interim relief in favour of the petitioner directing that the petitioner be admitted to the General Nursing Course according to her merits on the general category. The above interim order has operated all through out during the pendency of the petition. In the year 1990, therefore, petitioner would have obtained admission and completed her course. In the year 2006, other-wise also, it would not be possible to nullify the same. On both counts, therefore, petition succeeds. Interim direction granted in favour of the petitioner while admitting the petition is therefore, made absolute. The petition is disposed of accordingly. Rule made absolute to the above extent. with no order as to costs.

(Akil Kureshi,J.)

(raghu)